

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
James K. WEIXEL)	Group Art Unit: 3627
Application No.: 09/919,461)	Examiner: Ronald Laneau
Filed: July 31, 2001)	
For: SYSTEMS AND METHODS FOR)	
FULFILLING ORDERS USING)	
LOCATION-BASED ABBREVIATED)	
DIALING)	

COMPLIANT, DUPLICATE APPEAL BRIEF - RESUBMISSION

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Sir:

Responsive to a Notification of Non-Compliant Appeal Brief dated August 9, 2007, this is a resubmission of an Appeal Brief under Rule 41.37 appealing the final decision of the Examiner dated September 29, 2006. The Summary of Claimed Subject Matter, pages 7-15 herein, has been brought into compliance by providing a mapping of all independent claims to the specification and drawings.

A Notice of Appeal was filed on December 14, 2006. Each of the topics required by Rule 41.37 is presented herewith and labeled in accordance therewith. Only one copy of this Appeal Brief is required, in accordance with MPEP §1205.02.

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I. REAL PARTY IN INTEREST

The real party in interest is Verizon Corporate Services Group Inc., a corporation organized and existing under the laws of the state of New York, and having had a principal place of business address at 1095 Avenue of the Americas, New York City, New York 10036. Verizon recently moved its headquarters to One Verizon Way, Basking Ridge, New Jersey 09720.

II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences related to the present application of which the Appellant is aware.

III. STATUS OF CLAIMS

Claims 1-5 and 7-32 are currently pending in the application and all stand finally rejected, the date of the final Office Action being September 29, 2006.

Appellant appeals, therefore, from the final rejection of claims 1-5 and 7-32 which are presented in the Claims Appendix.

IV: STATUS OF AMENDMENTS

Subsequent to the final Office Action of September 29, 2006, (hereinafter "final Office Action"), Appellant has not filed an after-final Reply under 37 C.F.R. §1.116. The last amendment in this application was filed on July 24, 2006 responsive to a non-final office action. Accordingly, there are no outstanding amendments in this application.

V. SUMMARY OF CLAIMED SUBJECT MATTER

This summary is not intended to be used to construe or limit the claims, which are believed to speak for themselves, nor does Appellant intend for this summary to modify or add any claim elements, or to constitute a disclaimer of any equivalents to which the claims would otherwise be entitled, nor is any discussion of certain preferred embodiments herein intended to disclaim other possible embodiments. References herein to the specification are intended to be exemplary and not limiting.

Appellant shall let the dependent claims stand or fall with their respective independent claims and all independent claims shall stand or fall with independent claim 1. Regardless, Appellant maps all independent claims to the drawings and specification hereinbelow. But first, a general overview of the claimed subject matter is provided.

Appellant has found a novel solution to the problem of delay inherent in placing orders for goods and services while waiting (possibly in line) at one of the locations of a goods and services provider (vendor). In a novel and unique manner, Appellant places those orders in advance from a remote location by way of, for example, a cell phone, prior to arriving at one of the locations of the vendor. Thereby, those orders can be made available and ready for pickup by the customer with reduced delay, and preferably minimal or no delay, by the time that the customer traverses the remote distance from the location of placement of the order to a particular one of the multiple vendor locations where the order shall be filled. Thus, the fundamental dynamic of Appellant's invention involves trading-off customer's time of travel from the remote location where the customer's order is placed against inherent time delay that would have occurred, or would have been expected, in fulfilling the order, had the order been placed by the customer, in person, at the particular one of the multiple vendor locations.¹

Systems and method consistent with the present invention interconnects a customer and a vendor using a wireless service provider to facilitate an order made remotely by the customer using an abbreviated dialing sequence. The wireless service provider receives the abbreviated dialing sequence and determines the customer's location. Using the customer's location, the wireless service provider

¹ A fundamental deficiency in the prior art reference Merrill is that it has nothing to do with this fundamental

determines to which vendor location to send the customer's information. Upon receipt of the customer's information, the vendor automatically begins processing an order dictated by previously established preferences of the customer. The vendor may bill the customer's wireless account or a credit or debit card for the amount of the order, and the customer may arrive and quickly pick up the order. (¶ [0018], Specification)

Claim 1 recites: "A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel." (see at least Fig. 1 and ¶'s [0019] - [0023] Specification)

Claim 1 further recites: "one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer, both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by

the vendor to coincide with transit time of the customer." (see at least Figs. 1 and 3 and ¶'s [0024]-[0025], [0032]-[0036], [0039] Specification)

Claim 1 further recites: "a processing center coupled between the one or more base stations and the vendor and configured to receive the abbreviated dialing sequence, determine from the remote location the one of the multiple vendor locations to which to transmit customer information, and bill a wireless account of the customer for a monetary amount of the order." (see at least Fig. 2 and ¶'s [0026]-[0029], [0037]-[0038] Specification)

Claim 1 further recites: "wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services." (see at least Fig. 1 and ¶ [0030] Specification)

Independent claims 8, 17, 24, 28 and 30 are similarly mapped to the Drawings and Specification, as follows:

8. A method of providing abbreviated dialing service for a customer ordering goods or services from a vendor having multiple vendor locations while the customer is on travel, (see at least Fig. 1 and ¶'s [0019] - [0023] Specification) the method comprising:

receiving, at an abbreviated dialing processing center (see at least Fig. 1, 140), an abbreviated dialing sequence that corresponds to an order from a mobile terminal operated by the customer (see at least ¶ [0028] Specification);

determining a location of the mobile terminal when the sequence was received (see at least ¶'s [0022]-[0023] Specification); and

processing the abbreviated dialing sequence (see at least Fig. 2, 220 and ¶'s [0028]-[0029] Specification) and sending customer information to one of the vendor locations based on the location of the mobile terminal (see at least ¶'s [0025], [0035] Specification), wherein both the order being initiated at the location of the mobile terminal by the customer and preparation of the order being initiated

at the one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, reduces wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer (see at least Figs. 1 and 3 and ¶'s [0024]-[0025], [0032]-[0036], [0039] Specification) and wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services (see at least Fig. 1 and ¶ [0030] Specification).

17. A method of fulfilling an order from a customer by a vendor having multiple vendor locations, the order being initiated on a mobile terminal while the customer is on travel before the customer arrives at one of the multiple vendor locations, (see at least Fig. 1 and ¶'s [0019] - [0023] Specification) comprising:

receiving abbreviated dialing information at the vendor (see at least Fig. 1; 150), the abbreviated dialing information being received at the vendor based on a location of the mobile terminal (see at least ¶'s [0035]-[0039] Specification);

determining the one of the multiple vendor locations to which to transmit customer information relating to the order based on the location of the mobile terminal (see at least ¶ [0037] Specification);

selecting a particular order from the abbreviated dialing information (see at least ¶'s [0036], [0039] Specification);

preparing the particular order (see at least ¶ [0040] Specification); and

providing the particular order to the customer when the customer arrives (see at least ¶ [0040] Specification);

wherein both the order being initiated at the location of the mobile terminal by the customer and preparation of the order being initiated at the one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, reduces wait time of the customer by time-

shifting preparation of the order by the vendor to coincide with transit time of the customer (see at least Figs. 1 and 3 and ¶'s [0024]-[0025], [0032]-[0036], [0039] Specification) and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services (see at least Fig. 1 and ¶ [0030] Specification).

24. A method of supplying abbreviated dialing service to a vendor having multiple vendor locations, (see at least Fig. 1 and ¶'s [0019] - [0023] Specification) comprising:

designating one or more unique abbreviated dialing sequences for the vendor to facilitate remote ordering of goods or services by customers of the vendor while each of the customers is on travel (see at least ¶'s [0035]-[0036] Specification):

receiving the one or more unique abbreviated dialing sequences (see at least ¶ [0037] Specification);

determining locations of mobile terminals that initiated the received one or more unique abbreviated dialing sequences to obtain determined locations (see at least ¶ [0037] Specification); and

sending customer information to one or more of the multiple vendor locations based on the determined locations (see at least ¶ [0038] Specification);

wherein both the remote ordering being initiated at the determined locations by the customers and preparation responsive to the remote ordering being initiated at the one or more of the multiple vendor locations by the vendor before the customers arrive at the one or more of the multiple vendor locations, reduce wait time of the customers by time-shifting preparation of orders by the vendor to coincide with transit times of the customers (see at least Figs. 1 and 3 and ¶'s [0024]-[0025], [0032]-[0036], [0039] Specification) and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the

goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services (see at least Fig. 1 and ¶ [0030] Specification).

28. A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel, (see at least Fig. 1 and ¶'s [0019] - [0023] Specification) the system comprising:

means for receiving an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer (see at least ¶ [0037] Specification);

means for determining a location of the mobile terminal used by the customer during operation of the receiving means (see at least ¶ [0037] Specification);

means, using the determined location, for determining the one of the multiple vendor locations to which to transmit customer information relating to the order (see at least ¶ [0038] Specification); and

means for transmitting the customer information relating to the order to the one of the multiple vendor locations based on the determined location of the mobile terminal (see at least ¶'s [0038]-[0039] Specification);

wherein, both the order is initiated at the determined location by the customer and preparation of the order is initiated at the one of the multiple vendor locations by the vendor before the customer arrives at the one of the multiple vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer (see at least Figs. 1 and 3 and ¶'s [0024]-[0025], [0032]-[0036], [0039] Specification) and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services (see at least Fig. 1 and ¶ [0030] Specification).

30. A method of providing goods or services by a vendor having multiple vendor locations to a customer while the customer is on travel, (see at least Fig. 1 and ¶'s [0019] - [0023] Specification) the method comprising:

establishing an account for the customer (see at least Fig. 5, 510; ¶ [0043] Specification);

obtaining ordering preferences from the customer (see at least ¶ [0044] Specification);

associating the ordering preferences with abbreviated dialing codes (see at least ¶ [0044]

Specification);

receiving an abbreviated dialing code from the customer while being located remotely from the vendor and determining, on the basis of the remote location, one of the multiple vendor locations for the customer (see at least ¶ [0037] Specification); and

delivering the goods or services to the customer according to the ordering preferences and the received abbreviated dialing code at the one of the multiple vendor locations (see at least ¶ [0040] Specification);

wherein, both the order is initiated at the remote location by the customer and preparation of the order is initiated at the one of the multiple vendor locations by the vendor before the customer arrives at the one of the multiple vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer (see at least Figs. 1 and 3 and ¶'s [0024]-[0025], [0032]-[0036], [0039] Specification) and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services (see at least Fig. 1 and ¶ [0030] Specification).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the final Office Action, the following rejections were made:

Ground Number One:

Claims 1-5 and 7-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Morrill (U.S. 5,991,749) in view of Yang (U.S. Pub. No. 2004/0177008 hereinafter "Yang").

Ground Number Two:

Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over by Morrill in view of Yang and further in view of Stilp (U.S. 5,327,144), hereinafter "Stilp").

These are the sole grounds of rejection in the final Office Action, but only Ground Number One is to be reviewed on appeal.²

² As noted in the Argument section which follows, Appellants' independent claims shall stand or fall with his independent claims. Furthermore, all independent claims shall stand or fall with claim 1. Therefore, the second ground of rejection is moot.

VII: ARGUMENT

The independent claims on appeal are claims 1, 8, 17, 24, 28 and 30. Appellant shall let his dependent claims stand or fall with his respective independent claims and let independent claims 8, 17, 24, 28 and 30 stand or fall with claim 1. Therefore, the only claim for which arguments are being presented below is claim 1. All grounds of rejection are moot but for ground #1.

SUMMARY OF THE MORRILL DISCLOSURE:

Morrill relates to wireless telephony for collecting tolls, conducting financial transactions, and authorizing other activities. (Title) The procedures disclosed in Morrill allow use of cellular telephones and other wireless communication devices to conduct transactions and activities, effectively allowing each of those wireless telephones and devices to function as an electronic wallet, wireless PIN pad and contactless Smart Card. (Abstract) Morrill allows a cell phone to be used to transfer funds between accounts which is an example of allowing the cellular phone to function as an electronic wallet. (column 2, lines 18-44). Morrill also discloses three different and distinct examples of use of a cell phone to make transactions: (A) as an electronic wallet to purchase a snack lunch from a vendor at an outdoor craft fair (column 4, at least lines 1-4 and 39-47); (B) as a contactless smart card or electronic wallet in connection with parking one's vehicle in a parking garage facility (column 6, at least lines 19-21 and 36- 67 and column 7, at least lines 1-26); and (C) as a contactless smart card for payment of transit fares, focusing on bus transit (at least column 8, line 49- column 9, line 44). As detailed below, the final Office Action relies heavily upon the parking garage example and reads multiple sections located within Morrill's discussion of the parking garage example against various claim elements of claim 1, notwithstanding the limitations in claim 1 to goods and services obtainable from only certain vendors which do not include parking garage vendors. In all of these examples, and in the rest of the disclosure of Morrill, there is no discussion of a customer placing, in advance, an order by cell phone while traveling to offset order preparation time against customer travel time, which is central to Appellant's invention.

SUMMARY OF THE YANG DISCLOSURE:

Yang relates to a method and system for scheduling delivery of products to buyers and for

delivering those products to the buyers by way of portable kiosk or locker stations located along convenient commuting routes of those buyers. (Abstract) Referring to Fig. 16 of Yang, a potential buyer uses computer 1604 running an Internet browser to access Mobile Pickup Station (MPS) server 1600 via the Internet. The MPS server provides scheduling services for at least one regionally distributed MPS warehouse (MPS Warehouse 1 or 2). Each MPS warehouse communicates with the MPS server via the Internet using computers as exemplified by MPS warehouse 1 and 2 computers 1606 and 1608. (Yang, ¶ [0061])

A buyer accesses the MPS server via the Internet and uses the delivery scheduling services of the MPS server to define a pickup point to be used by the buyer. Presumably this is a pickup point that is also a convenient, commuting-route point for this buyer. The MPS server determines which MPS warehouse is to be used to dispatch the actual MPS (portable kiosk) to the defined pickup point with the buyer's products. (Yang, ¶ [0062])

ARGUMENT #1: CLAIM 1 IS ALLOWABLE SINCE EXAMINER'S RELIANCE UPON MORRILL'S PARKING LOT EXAMPLE TO REJECT THE CLAIM FAILS BECAUSE CLAIM 1 LIMITS ITS RECITED GOODS AND SERVICES TO THOSE SUPPLIED BY ONLY A CERTAIN GROUP OF VENDORS NOT INCLUDING PARKING VENDORS.

Claim 1 recites:

A system configured to facilitate ordering of goods or services by a customer from
a vendor having multiple vendor locations while the customer is on travel, the system comprising:

one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer, both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer; and

a processing center coupled between the one or more base stations and the vendor and configured to receive the abbreviated dialing sequence, determine from the remote location the one of the multiple vendor locations to which to transmit customer information, and bill a wireless account of the customer for a monetary amount of the order;

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

(Emphasis added.) For example, against one or more base stations "configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer" as recited in claim 1 (emphasis added) the Examiner cites Morrill, column 6, line 63-column 7, line 26 (final Office Action, page 2). This section of Morrill is discussing activity related only to its parking garage example. The recited "goods or services" of claim 1 being ordered are limited to those from particular vendors, and a parking garage vendor is not included in that group. Claim 1 clearly recites: "wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations." Thus the citation of this parking garage section of Morrill against this claim element is irrelevant.

Indeed, this section of Morrill cannot read on an "order from a mobile terminal used by the customer" as recited in claim 1 (emphasis added) because it cannot read on the cell-phone ordering by that customer of goods or services limited to those supplied by restaurants (e.g., food), pharmacies (e.g.,

prescription drugs), grocery stores (e.g., groceries), toll booths (e.g., permitted highway access), convenience stores (e.g., coffee/cigarettes) and gas stations (e.g., gasoline), (collectively hereinafter "Vendors"). Clearly, a parking garage does not supply goods or services corresponding to any of the goods or services supplied by the Vendors, whereby Morrill's description of activity related to a parking garage cannot read on the customer's "order from a mobile terminal used by the customer" as recited in claim 1 at least because it can't read on the "order." The customer's order is constrained by the recited claim language to be for goods or services that do not include parking garage services.

For another example, on page 3 of the final Office Action, with respect to Morrill, it states: "the location of the mobile terminal is determined (see paragraph bridging columns 6-7, wherein the facility ID number is an indication of the user's location; see also column 4, line 34)." (Emphasis added.) This statement may be intended to be relevant to Appellant's recited "the order being initiated at a remote location by the customer" as recited in claim 1 (emphasis added) and to Appellant's recited "determine from the remote location the one of the multiple vendor locations to which to transmit customer information" as recited in claim 1 (emphasis added). However, the paragraph in Morrill "bridging columns 6-7" which the Examiner cites is, again, the parking garage example of Morrill. That example is again irrelevant to claim 1 for reasons similar to those given above.

Indeed, this section of Morrill cannot read on e.g., "the order being initiated at a remote location by the customer" as recited in claim 1 (emphasis added) because the "order" in Morrill's parking garage example is not one that can be filled by the recited Vendors. The "order" in the instance of this parking garage example in Morrill would necessarily have to be for a vehicle parking spot, only. Clearly, a parking garage does not supply any of the goods or services supplied by the recited Vendors. It necessarily follows that a description of activity related to a parking garage cannot read on the recited customer's "order" no matter where the order is being initiated and, therefore does not read on "order being initiated at a remote location" as recited in claim 1. Indeed, the customer's order is constrained by the claim language to be for services that do not include parking garage services.

In addition, this section of Morrill does not read on the "remote location" recited in "the order being

initiated at a remote location by the customer" as recited in claim 1. (emphasis added) Assume, *arguendo*, that Morrill is not irrelevant, (which it is). The above-noted citation to the paragraph bridging columns 6 and 7 in Morrill discusses a parking garage facility ID number. The Examiner says: "the facility ID number is an indication of the user's location." (final Office Action, pg 3) In other words, the Examiner views that ID number as a means for identifying both (A) the location of the parking garage which is not necessarily the case because a facility ID is a facility ID and not a location, and there is no implication in Morrill that such ID teaches a location, and (B) the "remote" location of the customer by associating the parking garage's ID number (alleged location) with a customer's vehicle that has pulled-up to the very gate of that parking garage for entry purposes. First of all, Appellant submits that a customer at the front gate of a facility can not reasonably be interpreted as being "remote" from that facility.

Moreover, even if a facility with nothing more than an ID number can, *arguendo*, be characterized as having a *known* "location" (which it cannot), then how can a vehicle at the front gate of that same facility have a "remote location?" That is illogical. The parking facility cannot be at a "location" and at a "remote location" at the same time. Actually, the parking facility and the vehicle are co-located, but that location is not known from only an ID number.

Claim 1 recites, *inter alia*, "the order being initiated at a remote location by the customer" and the parking garage example, in addition to being completely irrelevant anyway, does not disclose or suggest at least this claim limitation at least because it also does not read on "remote location" for reasons given above. Appellant had previously made this argument in response to a past office action and respectfully submits this argument, in addition to the others made herein, to the Honorable Board for its consideration.

The other portion of the citation, to column 4, line 34 in Morrill, where the term "general location" is used is irrelevant. This refers to a face-to-face transaction (see column 4, lines 39-41) where a snack lunch is being purchased at an outdoor craft fair. The ordering is taking place at the same location where the goods are being supplied. This has nothing to do with an order being initiated at a "remote location" as recited in claim 1.

Therefore this Morrill parking facility cite is not effective for at least two reasons: (1) Morrill's parking garage cannot read on the recited "order" of claim 1 and (2) the alleged "remote location" at which the order was initiated is clearly not remote in the first place, even when taking into account the additional citation to column 4, line 34.

In direct response to the Examiner's Response to Arguments on page 5 of the final Office Action, wherein he states: "although Morrill system utilizes a parking lot but nothing prevents the system of Morrill from using good or services from a group of vendors consisting of restaurants, pharmacies, grocery stores, toll booth, convenience stores and gas stations as Applicant claims" Appellant disagrees for reasons given above and reiterates: the recited goods or services in claim 1 are inherently constrained to those which are capable of being supplied by one or more of the Vendors (e.g., prescription drugs, food, etc.). To the extent that the Examiner has relied upon Morrill's parking garage example, this offers a parking service only and, therefore, is not capable of supplying the recited goods or services. Therefore, the Examiner's reading of Morrill against claim 1 is without merit. Yang does not cure this deficiency in Morrill.

ARGUMENT #2: IN CLAIM 1, RECITED LOCATION OF INITIATION OF ORDER PREPARATION IS THE SAME LOCATION WHERE CUSTOMER PICKS UP ORDER BUT YANG DOES NOT INITIATE ITS ORDER PREPARATION IN ITS PORTABLE KIOSK WHERE ITS GOODS ARE PICKED UP.

Claim 1 recites:

A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel, the system comprising:

one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer, both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer; and

a processing center coupled between the one or more base stations and the vendor and configured to receive the abbreviated dialing sequence, determine from the remote location the one of the multiple vendor locations to which to transmit customer information, and bill a wireless account of the customer for a monetary amount of the order;

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which

allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

(Emphasis added.) Claim 1 has been reproduced again, but with different emphasis from that given in the first presentation of claim 1, to now emphasize the differences between Yang and Appellant's claim 1.

As shown in Yang's Fig. 16, a buyer located at computer terminal 1604 sends an email message ordering goods or services (e.g., food) via the Internet to an MPS (mobile pickup station) warehouse 1 or 2 where computer terminals 1606 or 1608 are located, respectively. The MPS warehouse is discussed throughout Yang. See, e.g., paragraphs [0068] and [0182], reproduced herein:

[0068] A mobile pickup point may also be a place where the MPS system can station a movable kiosk, such as subway station or at a street crossing etc. A MPS stays at the pickup point for a determined period of time waiting for users to pickup their orders. If the MPS station is a vehicle, an operator drives the station to the designated pickup point and stays there. If the MPS station is a movable kiosk, a truck may drop the kiosk at the designated pickup point and pick it up and return the MPS to a MPS warehouse when the station time is over for reloading. (emphasis added)

[0182] There are various ways products can be shipped to a MPS warehouse, which will be disclosed later. Once ordered products are shipped to a MPS warehouse, the products are loaded on to a MPS and then the MPS moves to a MPS pickup point at step 420 and waits for buyers to pickup up products at step 422. (emphasis added)

Clearly, these sections indicate that the MPS warehouse stores the goods (e.g., food) which are to be delivered by way of an MPS (e.g., the portable kiosk) to a pickup point. The MPS warehouse is a storage facility from which an MPS can be loaded or reloaded. The MPS warehouse and MPS pickup points are also depicted in Yang's Figs. 11-14, which shows the MPS pickup points at locations other than at the location of the MPS warehouse.

It is clear from all of this disclosure that the MPS (mobile pickup station) is NOT where preparation of the order is initiated. The preparation of the order in Yang is initiated at some point upstream, prior to its being supplied to the MPS. (Rather, the MPS is the place where the order is terminated by being delivered to the customer at the pickup point from the MPS.)

Appellant submits that preparation of the order in Yang may be initiated in the vendor's MPS server which receives the order from the customer. After all, the MPS server puts the wheels in motion to respond to the order, and therefore is the initiator of the preparation of the order. Initiating the preparation

of the order may mean marshalling or assembling the component parts which comprise the order, and this is done by operation of, or under the control of, the vendor's MPS server.

Assuming, *arguendo*, that the vendor's server in Yang is not the initiator of the order (which Appellant submits that it is) then certainly, the vendor's MPS warehouse, where the component parts are stored, or to which the component parts are being shipped from third party suppliers, is a far more qualified candidate for being the place where preparation of the order was initiated than the MPS. The MPS warehouse is further upstream than the MPS in the preparation stream. The MPS is at the end of the stream and is little more than a delivery vehicle.

Even if an order in Yang is a food order which is being cooked in the MPS itself, it is clear that the food ingredients were culled-together, packaged and delivered to the MPS from the MPS warehouse. The initiation of the order was, therefore, in the warehouse or earlier. The warehouse, even in this instance, therefore, remains a far more qualified candidate for being the place where preparation of the order was initiated than the MPS. In any event, it is clear that the MPS is **NOT** where the preparation of the order is initiated.

In light of this analysis, consider Appellant's claim limitation: "preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations" as recited in claim 1, (emphasis added). Appellant's claim limitation requires the customer to arrive at the vendor location at which preparation of the order was **INITIATED**. But, that is not possible in Yang because the customer, in Yang, always arrives at the MPS pickup point which is the vendor location (e.g., the MPS portable kiosk) where the preparation of the order was **NOT INITIATED**.

In view of this clear difference between the disclosure of Yang and the subject matter recited in Appellant's claim 1, and in view of the fact that Morrill does not cure this deficiency in Yang, Appellant submits that claim 1 is not disclosed or suggested by Yang or Morrill taken individually or in combination.

Furthermore, the final Office Action does not apply any section of Yang or Morrill against Appellant's claim limitation "preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations" as recited in claim 1. This oversight

had previously been pointed-out in the paragraph bridging pages 16/17 in the prior amendment filed on July 24, 2006.

The closest the final Office Action comes to addressing this limitation is in tangential commentary in its "Response to Arguments" spanning pages 5/6 thereof. For example, it says "In response to Applicant's arguments, the ultimate goal is for the customer to pick up the goods on his/her commuting route and the system of Yang provides such features." But, the Examiner's view of Appellant's "ultimate goal" and the actual claim language being examined relative to the prior art are two different things. The possibility that both Yang and Appellant's claim 1 might achieve a similar result for certain customers under particular circumstances (e.g., a hamburger picked-up at a kiosk may seem to be similar to a hamburger picked-up at a McDonald's drive-by window) is not a sufficient basis upon which to reject the claim. In determining allowability of a claim, it is the language of the claim that is crucial, not Appellant's "ultimate goal." See MPEP § 2143.03: "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). 'All words in a claim must be considered in judging the patentability of that claim against the prior art.' *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." All words in a claim must be considered! Appellant submits, however, that the words: "preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations" as recited in claim 1 were not considered - they were ignored.

The additional commentary in the "Response to Arguments" section of the final Office Action (pg. 6) directed to knowledge of location where the goods are being prepared is also irrelevant to the claim language being rejected. (The issue of where a specified vendor is located is discussed at least in paragraph [0037] in Appellant's specification.)

Further, the Examiner alleges confusion about "one of a vendor locations" (final Office Action pg. 6) but this quote is not the exact language used in the claim. The claim actually recites that the order is initiated at "one of the vendor locations" and then, using accepted antecedent format, refers back to that location as "the one of the vendor locations" which is clear claim language.

None of these irrelevant remarks confront the actual claim language limitation "preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations" as recited in claim 1. In view of no citation in either Yang or Morrill against this claim language, Appellant respectfully submits that the Examiner has acquiesced in an admission that such language is not disclosed or suggested in either of these references taken individually or in combination. This is a critical limitation which clearly distinguishes claim 1 over Yang for reasons given above, as well as over the Yang/Morrill combination because Morrill does not cure this deficiency in Yang.

For reasons presented in either Argument #1 or Argument #2, or in both of them, Morrill and Yang taken individually or in combination, do not disclose or suggest the subject matter recited in claim 1. Therefore, in accordance with MPEP 2143, a prima facie case of obviousness has not been established and the 35 U.S.C § 103(a) rejection of claim 1 should be REVERSED and the claim allowed.

CLAIM LIMITATION REVIEW:

The same limitations discussed above appear in each one of the other independent claims 8, 17, 24, 28 and 30, set forth and highlighted below:

8. A method of providing abbreviated dialing service for a customer ordering goods or services from a vendor having multiple vendor locations while the customer is on travel, the method comprising:

- receiving, at an abbreviated dialing processing center, an abbreviated dialing sequence that corresponds to an order from a mobile terminal operated by the customer;
- determining a location of the mobile terminal when the sequence was received; and
- processing the abbreviated dialing sequence and sending customer information to one of the vendor locations based on the location of the mobile terminal, wherein both the order being initiated at the location of the mobile terminal by the customer and preparation of the order being initiated at the one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, reduces wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

17. A method of fulfilling an order from a customer by a vendor having multiple vendor locations, the order being initiated on a mobile terminal while the customer is on travel before the customer arrives at one of the multiple vendor locations, comprising:

receiving abbreviated dialing information at the vendor, the abbreviated dialing information being received at the vendor based on a location of the mobile terminal;
determining the one of the multiple vendor locations to which to transmit customer information relating to the order based on the location of the mobile terminal;
selecting a particular order from the abbreviated dialing information;
preparing the particular order; and
providing the particular order to the customer when the customer arrives;
wherein both the order being initiated at the location of the mobile terminal by the customer and preparation of the order being initiated at the one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, reduces wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and
wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

24. A method of supplying abbreviated dialing service to a vendor having multiple vendor locations, comprising:
designating one or more unique abbreviated dialing sequences for the vendor to facilitate remote ordering of goods or services by customers of the vendor while each of the customers is on travel;
receiving the one or more unique abbreviated dialing sequences;
determining locations of mobile terminals that initiated the received one or more unique abbreviated dialing sequences to obtain determined locations; and
sending customer information to one or more of the multiple vendor locations based on the determined locations;
wherein both the remote ordering being initiated at the determined locations by the customers and preparation responsive to the remote ordering being initiated at the one or more of the multiple vendor locations by the vendor before the customers arrive at the one or more of the multiple vendor locations, reduce wait time of the customers by time-shifting preparation of orders by the vendor to coincide with transit times of the customers and
wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

28. A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel, the system comprising:
means for receiving an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer;
means for determining a location of the mobile terminal used by the customer during operation of the receiving means;
means, using the determined location, for determining the one of the multiple vendor locations to which to transmit customer information relating to the order; and
means for transmitting the customer information relating to the order to the one of the multiple vendor locations based on the determined location of the mobile terminal;
wherein, both the order is initiated at the determined location by the customer and preparation of the order is initiated at the one of the multiple vendor locations by the vendor before the customer arrives at the one of the multiple vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

30. A method of providing goods or services by a vendor having multiple vendor locations to a customer while the customer is on travel, the method comprising:
establishing an account for the customer;
obtaining ordering preferences from the customer;
associating the ordering preferences with abbreviated dialing codes;
receiving an abbreviated dialing code from the customer while being located remotely from the vendor and determining, on the basis of the remote location, one of the multiple vendor locations for the customer; and
delivering the goods or services to the customer according to the ordering preferences and the received abbreviated dialing code at the one of the multiple vendor locations;
wherein, both the order is initiated at the remote location by the customer and preparation of the order is initiated at the one of the multiple vendor locations by the vendor before the customer arrives at the one of the multiple vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and
wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

Therefore, for at least the reasons given above with respect to claim 1, the rejection of independent claims 1, 8, 17, 24, 28 and 30 should be REVERSED and the claims allowed. Dependent claims 2-5 and 7, depending from claim 1; claims 9-16, depending from claim 8; claims 18-23, depending from claim 17; claims 25-27, depending from claim 28; claim 29, depending from claim 28; and claims 31-32, depending from claim 30 are all allowable at least for reasons based on their respective dependencies from allowable base claims.

CONCLUSION

For the reasons given above, Appellant respectfully requests that the Honorable Board reverse the final rejection of the appealed claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

Respectfully submitted,



Date: January 29, 2007 (original date)
August 20, 2007 (compliant brief date)

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VIII: CLAIMS APPENDIX

1. A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel, the system comprising:

one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer, both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer; and

a processing center coupled between the one or more base stations and the vendor and configured to receive the abbreviated dialing sequence, determine from the remote location the one of the multiple vendor locations to which to transmit customer information, and bill a wireless account of the customer for a monetary amount of the order;

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

2. The system of claim 1, wherein the customer information transmitted to the vendor includes:

an account number of the wireless account or an identification number of the mobile terminal, and
the abbreviated dialing sequence.

3. The system of claim 1, wherein the processing center includes:
a database containing preferences of the customer for at least one vendor, and
wherein the customer information transmitted to the vendor includes:
the customer's wireless account number or an identification number of the
customer's mobile terminal, and
information designating the order obtained from the database.
4. The system of claim 1, further comprising:
one or more signs that provide a name or logo of the vendor and the abbreviated dialing
sequence corresponding to the vendor.
5. The system of claim 1, wherein the one or more base stations and the processing center
are configured to determine a location of the mobile terminal used by the customer.
7. The system of claim 1, wherein the customer is a motorist.
8. A method of providing abbreviated dialing service for a customer ordering goods or
services from a vendor having multiple vendor locations while the customer is on travel, the method
comprising:
receiving, at an abbreviated dialing processing center, an abbreviated dialing sequence
that corresponds to an order from a mobile terminal operated by the customer;
determining a location of the mobile terminal when the sequence was received; and
processing the abbreviated dialing sequence and sending customer information to one of
the vendor locations based on the location of the mobile terminal, wherein both the order being initiated at
the location of the mobile terminal by the customer and preparation of the order being initiated at the one
of the vendor locations by the vendor before the customer arrives at the one of the vendor locations,

reduces wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

9. The method of claim 8, wherein said processing the abbreviated dialing sequence and sending customer information includes:

sending a wireless account number of the customer or an identification number of the mobile terminal, and

sending the abbreviated dialing sequence.

10. The method of claim 8, further comprising:

storing order preferences of the customer, and

wherein said processing the abbreviated dialing sequence and sending customer information includes:

sending a wireless account number of the customer or an identification number of the mobile terminal,

obtaining information designating the order from the stored preferences, and

sending the information designating the order.

11. The method of claim 8, wherein said processing the abbreviated dialing sequence includes:

identifying the one of the multiple vendor locations that is most convenient to the customer based on the determined location of the mobile terminal.

12. The method of claim 8, wherein said determining includes:
receiving a unique abbreviated dialing sequence, and
inferring the location of the mobile terminal based the received unique abbreviated dialing sequence.
13. The method of claim 8, said determining includes:
calculating the location of the mobile terminal based on signal information received at one or more base stations.
14. The method of claim 13, wherein the signal information includes one of time delay information and global positioning system (GPS) information.
15. The method of claim 8, further comprising:
billing a wireless account of the customer for a monetary amount of the order.
16. The method of claim 8, further comprising:
billing a credit or debit card of the customer for a monetary amount of the order.
17. A method of fulfilling an order from a customer by a vendor having multiple vendor locations, the order being initiated on a mobile terminal while the customer is on travel before the customer arrives at one of the multiple vendor locations, comprising:
receiving abbreviated dialing information at the vendor, the abbreviated dialing information being received at the vendor based on a location of the mobile terminal;
determining the one of the multiple vendor locations to which to transmit customer information relating to the order based on the location of the mobile terminal;
selecting a particular order from the abbreviated dialing information;

preparing the particular order; and

providing the particular order to the customer when the customer arrives;

wherein both the order being initiated at the location of the mobile terminal by the customer and preparation of the order being initiated at the one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, reduces wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

18. The method of claim 17, further comprising:

obtaining customer preferences from the customer; and

storing the customer preferences.

19. The method of claim 18, wherein the customer preferences include at least one default order.

20. The method of claim 17, wherein said receiving includes:

receiving a wireless account number of the customer or an identification number of the mobile terminal, and

receiving an abbreviated dialing sequence.

21. The method of claim 17, further comprising:

charging a wireless account of the customer for a monetary amount of the order.

22. The method of claim 17, further comprising:
charging a credit or debit card of the customer for a monetary amount of the order.
23. The method of claim 17, wherein said selecting includes:
selecting a particular order based on the abbreviated dialing information and stored customer preferences.
24. A method of supplying abbreviated dialing service to a vendor having multiple vendor locations, comprising:
designating one or more unique abbreviated dialing sequences for the vendor to facilitate remote ordering of goods or services by customers of the vendor while each of the customers is on travel;
receiving the one or more unique abbreviated dialing sequences;
determining locations of mobile terminals that initiated the received one or more unique abbreviated dialing sequences to obtain determined locations; and
sending customer information to one or more of the multiple vendor locations based on the determined locations;
wherein both the remote ordering being initiated at the determined locations by the customers and preparation responsive to the remote ordering being initiated at the one or more of the multiple vendor locations by the vendor before the customers arrive at the one or more of the multiple vendor locations, reduce wait time of the customers by time-shifting preparation of orders by the vendor to coincide with transit times of the customers and
wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

25. The method of claim 24, further comprising:
entering into an agreement with the vendor to provide the abbreviated dialing service to the vendor.
26. The method of claim 25, further comprising:
collecting revenue from the vendor according to the agreement.
27. The method of claim 24, further comprising:
charging wireless accounts of the customers for monetary amounts of orders placed by the customers.
28. A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel, the system comprising:
means for receiving an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer;
means for determining a location of the mobile terminal used by the customer during operation of the receiving means;
means, using the determined location, for determining the one of the multiple vendor locations to which to transmit customer information relating to the order; and
means for transmitting the customer information relating to the order to the one of the multiple vendor locations based on the determined location of the mobile terminal;
wherein, both the order is initiated at the determined location by the customer and preparation of the order is initiated at the one of the multiple vendor locations by the vendor before the customer arrives at the one of the multiple vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

29. The system of claim 28, further comprising:

means for billing a wireless account of the customer for a monetary amount of the order.

30. A method of providing goods or services by a vendor having multiple vendor locations to a customer while the customer is on travel, the method comprising:

establishing an account for the customer;

obtaining ordering preferences from the customer;

associating the ordering preferences with abbreviated dialing codes;

receiving an abbreviated dialing code from the customer while being located remotely from the vendor and determining, on the basis of the remote location, one of the multiple vendor locations for the customer; and

delivering the goods or services to the customer according to the ordering preferences and the received abbreviated dialing code at the one of the multiple vendor locations;

wherein, both the order is initiated at the remote location by the customer and preparation of the order is initiated at the one of the multiple vendor locations by the vendor before the customer arrives at the one of the multiple vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer and

wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services.

31. The method of claim 30, further comprising:
advising the customer of the abbreviated dialing codes associated with the ordering preferences.
32. The method of claim 30, wherein said obtaining includes:
acquiring a preferred manner of payment from the customer.

IX. EVIDENCE APPENDIX

none

X. RELATED PROCEEDINGS APPENDIX

none